

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**WILLIAM SCOTT BAUMHOFFER,**

Civil Case No. 10-356-KI

Plaintiff,

OPINION AND ORDER

vs.

**MICHAEL J. ASTRUE**, Commissioner  
of Social Security,

Defendant.

William Scott Baumhofer  
7583 S.W. 74th Avenue, #F1  
Portland, Oregon 97223

Pro Se Plaintiff

Dwight C. Holton  
United States Attorney  
District of Oregon

Adrian L. Brown  
Assistant United States Attorney  
1000 SW Third Avenue, Suite 600  
Portland, Oregon 97204-2902

David R. Johnson  
Special Assistant United States Attorney  
Office of the General Counsel  
Social Security Administration  
701 Fifth Avenue, Suite 2900 M/S 221A  
Seattle, Washington 98104-7075

Attorneys for Defendant

KING, Judge:

Plaintiff William Baumhofer brings this action pursuant to section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), to obtain judicial review of a final decision of the Commissioner denying plaintiff's application for the Medicare prescription drug (Part D) Low Income Subsidy, also known as Extra Help. As the Social Security Administration ("SSA") explains:

Anyone who has Medicare can get Medicare prescription drug coverage. Some people with limited resources and income also are eligible for Extra Help to pay for the costs—monthly premiums, annual deductibles, and prescription co-payments—related to a Medicare prescription drug plan. The Extra Help is estimated to be worth about \$4,000 per year.

<http://www.ssa.gov/pubs/10525.html> (last visited Mar. 22, 2011). After reviewing the record, I affirm the decision of the Commissioner.

#### **PROCEDURAL HISTORY**

Baumhofer filed an application for Extra Help on October 3, 2008. On November 3, 2008, the SSA sent a Notice of Denial stating that Baumhofer was not eligible for Extra Help

because his countable resources exceeded the legal resource limit by \$57,230. Baumhofer asked for a hearing and a Subsidy Determination Reviewer (“SDR”) held one on February 26, 2009. The SDR again denied Baumhofer’s claim because his resources exceeded the legal limit. After Baumhofer appealed that decision in federal court, the SSA could not produce a transcript of the hearing, due to computer problems. Another SDR held a second hearing on January 6, 2010 and, on January 27, 2010, found that Baumhofer was not eligible for Extra Help because his resources exceeded the legal limit. Baumhofer seeks review of the January 27, 2010 decision.

Baumhofer continued to file applications for Extra Help while working his way through the appellate process. On August 27, 2010, the SSA awarded Baumhofer a full subsidy based on deeming by the Centers for Medicare and Medicaid Services (“CMS”). Being deemed eligible based on certain nonfinancial criteria is an alternative method to receive assistance with Medicare payments.

### **LEGAL STANDARDS**

The Commissioner’s findings on any fact are conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is more than a “mere scintilla” of the evidence but less than a preponderance. Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005).

### **DISCUSSION**

Some individuals, including individuals eligible for Medicaid as a Qualified Medicare Beneficiary (“QMB”), are deemed eligible for a full Part D Extra Help subsidy. 42 C.F.R. § 423.773(c)(1)(iii). The CMS administers Medicare Part D. Id. § 418.3005. The SSA’s Program Operations Manual System (“POMS”) explains that CMS: “[d]etermines if an

individual is deemed eligible for the low-income subsidy based on monthly data from State Medicaid agencies and SSA's records of SSI participation. . . . Deeming is a CMS activity; SSA does not make these determinations and cannot address any appeals of deeming decisions." POMS HI 03001.005C, available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0603001005> (last visited Mar. 23, 2011).

Although Baumhofer wanted the SDR to make the determination that he was deemed eligible, the SSA does not have the authority to do so. Consequently, the SDR did not err by failing to consider that status.

The SDR did apply the SSA's eligibility rules for Extra Help. Baumhofer met all of the rules except for his financial resources. The issue is whether the value of his IRAs counts as a resource. Baumhofer testified at his second hearing that he had several IRAs valued at less than \$50,000. When he later sent copies of his statements to the SDR, the IRAs totaled \$47,227.66.

"[R]esources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance." Id. § 418.3401. Only liquid resources are counted, defined to be "cash, financial accounts, and other financial instruments that can be converted to cash within 20 workdays." Id. § 418.3405(a). There is no evidence that Baumhofer's IRAs were not liquid under this definition.

The SSA does not count a claimant's home as a resource. The regulations define a home to be "any property in which you (and your spouse, if any) have an ownership interest and which serves as your principal place of residence." Id. § 418.3425(a). At the hearing, Baumhofer contended that the IRAs represent his ability to make payments on a home and thus should not be counted. Obviously, the IRAs are not his principal place of residence. The argument is

unpersuasive. Consequently, the SDR correctly counted the IRAs, which put Baumhofer's resources over the \$11,010 limit. The SDR's decision to deny Baumhofer's application for Extra Help was a correct one.

### **CONCLUSION**

The findings of the Commissioner are based upon substantial evidence in the record and the correct legal standards. For these reasons, the court affirms the decision of the Commissioner.

IT IS SO ORDERED.

Dated this 23rd day of March, 2011.

/s/ Garr M. King  
Garr M. King  
United States District Judge